

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

VLSI TECHNOLOGY LLC

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VS.

* CIVIL ACTION NO. AU-19-CV-977

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INTEL CORPORATION

*

February 1, 2021

BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
DISCOVERY HEARING (via Zoom)

APPEARANCES:

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10:03 1 (February 1, 2021, 10:03 a.m.)

10:03 2 DEPUTY CLERK: Discovery Hearing in Civil Action

10:03 3 1:19-CV-977, styled VLSI Technology LLC versus Intel

10:03 4 Corporation.

10:03 5 THE COURT: If I could hear announcements, please,

10:03 6 starting with the plaintiff and then for defendant.

10:03 7 MR. MANN: Good morning, Your Honor. Mark Mann on behalf

10:03 8 of VLSI, along with Andy Tindel, and my colleagues from Irell &

10:04 9 Manella, Ian Washburn and Michael Harbour. And we're ready to

10:04 10 proceed.

10:04 11 THE COURT: Mr. Ravel?

10:04 12 MR. RAVEL: Your Honor, Steve Ravel for defendant Intel.

10:04 13 Our client rep today is Mashood Rassam. Jim Wren is here with

10:04 14 us. Bill Lee sends his regrets, but here from Wilmer are Liv

10:04 15 Herriot, whose first argument you assigned a five-star Yelp

10:04 16 rating about six months ago.

10:04 17 (Laughter.)

10:04 18 MR. RAVEL: Amanda Major, Joe Mueller, and our primary

10:04 19 speaker today will be Mark Selwyn.

10:04 20 THE COURT: Okay. I'm happy to take up whatever you all

10:04 21 would care for me to take up.

10:04 22 MR. SELWYN: Good morning, Your Honor. Mark Selwyn for

10:04 23 Intel. We're here to address Intel's request for relief from

10:04 24 the protective order.

10:04 25 THE COURT: Okay.

10:04 1 MR. SELWYN: As Your Honor will recall, the protective
10:04 2 order entered in this case states at Paragraph 65 that it is
10:05 3 entered without prejudice to the right of any party to apply to
10:05 4 the Court at any time for additional protection or to relax or
10:05 5 rescind the restrictions of this order when convenience or
10:05 6 necessity requires.

10:05 7 In Paragraph 43 of the protective order which relates to
10:05 8 the use to which designated material may be put, similarly
10:05 9 contemplates that the Court may order relief from the
10:05 10 restrictions of the protective order. And that language in the
10:05 11 Court's protective order is hardly unique. Protective orders
10:05 12 generally include language regarding the ability of any party
10:05 13 to seek to relax or rescind restrictions imposed by a
10:05 14 protective order on how documents may be used.

10:05 15 Judge Chen, who is presiding over the antitrust litigation
10:05 16 involving VLSI and Intel in the Northern District of California
10:05 17 also in his decision recognized that a party is generally free
10:06 18 to seek relief from protective orders to use otherwise
10:06 19 restricted information and documents for purposes of related
10:06 20 litigation.

10:06 21 Last month Judge Chen, when he dismissed Intel and Apple's
10:06 22 amended complaint based on what he identified as shortcomings
10:06 23 in the level of detail alleged, wrote that Intel and Apple,
10:06 24 "could have asked the courts presiding over the VLSI
10:06 25 infringement suits against Intel for relief from the protective

10:06 1 order so that they can make a filing under seal in this case to
10:06 2 provide further evidence to support their allegations."

10:06 3 THE COURT: Meaning the case out there -- when you say
10:06 4 "this case," meaning the case --

10:06 5 MR. SELWYN: Correct.

10:06 6 THE COURT: Okay. Got it.

10:06 7 MR. SELWYN: I'm quoting from his decision.

10:06 8 THE COURT: Got it.

10:06 9 MR. SELWYN: And he granted leave to amend, ruling that
10:06 10 Intel and Apple could file an amended complaint that includes
10:07 11 the information that he found to be missing.

10:07 12 So that's why we are here today. Intel is seeking relief
10:07 13 from the protective order entered in this case so that it may
10:07 14 file under seal in the antitrust litigation the three very
10:07 15 specific pieces of information that we have identified in the
10:07 16 joint table submitted to the Court before this hearing.

10:07 17 And the three pieces of information are the following:
10:07 18 The cost to acquire two of the patents-in-suit, statements made
10:07 19 by VLSI's expert regarding the alleged value and significance
10:07 20 of the '357 patent and statements made by VLSI's expert
10:07 21 regarding the alleged value and significance of the '983
10:07 22 patent.

10:07 23 So Intel is not seeking broad categories of documents or
10:07 24 information as has been suggested by VLSI. We've identified
10:08 25 very precisely that which we are seeking relief from the

10:08 1 protective order to use in the antitrust litigation and very
10:08 2 precisely where that information can be found. We're seeking
10:08 3 to use in the antitrust litigation a total of three documents
10:08 4 subject to this Court's protective order. So it's a very
10:08 5 bounded request.

10:08 6 VLSI's suggestion that it relied on the protective order
10:08 7 somehow being immutable, and its charge that Intel is now
10:08 8 reneging on the stipulation is respectfully not correct. The
10:08 9 protective order itself makes clear that any party can seek to
10:08 10 modify any portion of it.

10:08 11 And the three specific pieces of information we've
10:08 12 identified comports with what Judge Chen stated. We could seek
10:08 13 relief from protective orders in underlying patent infringement
10:08 14 litigations to obtain, and with what he indicated was the type
10:09 15 of detail that would be relevant to Intel and Apple's
10:09 16 allegations about VLSI and others extracting super-competitive
10:09 17 royalties.

10:09 18 Why is the information about purchase price and damages
10:09 19 claims and the differential between them relevant? Well, to
10:09 20 just try to briefly summarize. It's relevant for two primary
10:09 21 reasons in that litigation. First, it will provide further
10:09 22 evidence of how VLSI has sought super-competitive royalties.
10:09 23 And, second, the statements of VLSI's own experts about the
10:09 24 value and the significance of the '357 and '983 patents will
10:09 25 address the issue that Judge Chen raised in his decision of

10:09 1 whether VLSI considers those two patents to be "crown jewels of
10:09 2 the field or just a small portion of a large field of
10:10 3 substitutes."

10:10 4 In opposing our request for relief from the protective
10:10 5 order, VLSI doesn't suggest that the confidentiality of this
10:10 6 information will be jeopardized by the disclosure to another
10:10 7 court, and of course it won't. The information will only be
10:10 8 disclosed to Judge Chen, and it will be under seal. Nor does
10:10 9 VLSI explain how it will be prejudiced in any way by Intel's
10:10 10 request, and of course it won't. It will be free to make its
10:10 11 relevance arguments to Judge Chen.

10:10 12 So at bottom we would suggest VLSI simply wants to keep
10:10 13 information from the Court in the Northern District of
10:10 14 California that would further support the allegations that
10:10 15 Intel and Apple have made in the antitrust litigation. This
10:10 16 presents precisely the situation where courts have granted
10:10 17 relief from protective orders.

10:10 18 So we're coming to Your Honor based upon the paragraphs in
10:10 19 the protective order that say that a party can seek relief to
10:11 20 relax or rescind restrictions. We're seeking very specific
10:11 21 bounded documents. They will be submitted under seal to the
10:11 22 Court in California for purposes relevant to the Court's
10:11 23 decision in California.

10:11 24 THE COURT: Mr. Mann, who will be speaking on behalf of
10:11 25 the plaintiff?

10:11 1 MR. WASHBURN: Good morning, Your Honor -- sorry.

10:11 2 MR. MANN: I'm sorry. Mr. Washburn, Your Honor, to answer
10:11 3 the question.

10:11 4 THE COURT: Thank you, sir.

10:11 5 MR. WASHBURN: And, Your Honor, also on the line is my
10:11 6 colleague, Mr. Harbour. Mr. Harbour is heavily involved in
10:11 7 Intel's antitrust suit against VLSI in Northern California. I
10:11 8 plan to primarily argue, but if Your Honor has questions about
10:11 9 that case, Mr. Harbour may be able to help as well.

10:11 10 THE COURT: Okay.

10:11 11 MR. WASHBURN: Let me briefly address two topics, Your
10:11 12 Honor, starting with why Intel's request should be denied.

10:11 13 First, Your Honor ordered Intel and VLSI in your
10:12 14 protective order to only use confidential information produced
10:12 15 in any of the three cases before Your Honor for purposes of
10:12 16 that case or certain specifically-listed related infringement
10:12 17 cases. You ordered us and Intel not to use confidential
10:12 18 information for any other purpose.

10:12 19 We have obeyed that. For example, although we have access
10:12 20 to a lot of Intel's source code and specifications, and
10:12 21 although we have a lot of patents that are not in this case, we
10:12 22 have not used our access to Intel's source code in this case to
10:12 23 investigate other infringement claims we could file against
10:12 24 Intel.

10:12 25 Respectfully, Intel has already been using information

10:12 1 from this case to develop claims against VLSI here in antitrust
10:12 2 claim. In breach of your order and their own stipulation, they
10:12 3 wouldn't be asking you for this relief if they hadn't already
10:12 4 thought about it.

10:12 5 So, and just as an example, they've stated to Judge Chen,
10:12 6 "the arm's length acquisition prices for these patents are in
10:12 7 the low millions of dollars," and that the damages demands
10:13 8 "exceed by magnitude upon magnitude upon magnitude the
10:13 9 acquisition price."

10:13 10 So they have been using information under your PO to
10:13 11 develop claims, and now they're asking to do it more. And
10:13 12 respectfully, Your Honor, we submit that should not be allowed.
10:13 13 This is analogous to allowing us to use Intel's technical
10:13 14 information in this case to evaluate whether to pursue
10:13 15 additional patent litigation against Intel. And if Your
10:13 16 Honor's not going to allow us to do that, you should also not
10:13 17 allow Intel to do this.

10:13 18 Second reason to deny, Your Honor, Intel has repeatedly
10:13 19 refused --

10:13 20 THE COURT: Let me stop you there.

10:13 21 I'd like to hear from -- I'll let you continue afterwards,
10:13 22 but I'd like to hear from counsel for Intel in response to
10:13 23 that. I think that's a pretty compelling argument about metes
10:13 24 and bounds of what was exchanged in this case and what it could
10:13 25 be used for. And if it wasn't this case, it was certainly in

10:13 1 13 million others that I've heard fights between counsel, when
10:14 2 the lead fights we have when turning over source code is making
10:14 3 sure that we quarantine it so that it's used for this
10:14 4 litigation and not by plaintiffs like VLSI for future
10:14 5 litigation, specifically as you said.

10:14 6 So I'd like to hear from Intel's counsel as to why the
10:14 7 same -- why it's not a mirror concern here that Intel be able
10:14 8 to use information that VLSI provided to it under the
10:14 9 protection of this protective order.

10:14 10 I've already heard and understand that the boilerplate
10:14 11 language that is in every protective order that, you know,
10:14 12 allows it to be modified or allows me to modify it. But I'd
10:14 13 like to hear, Mr. Selwyn, if you would directly address what
10:14 14 was just said.

10:14 15 MR. SELWYN: Certainly. Your Honor, we have not used any
10:15 16 of the protected information we are seeing from this case for
10:15 17 the antitrust litigation, and we will not unless and until
10:15 18 given permission to do so.

10:15 19 As the protective order in this case contemplates, we are
10:15 20 seeking permission from this Court to use the protected
10:15 21 information we have specified from this case for the antitrust
10:15 22 litigation, and VLSI is challenging us for asking for
10:15 23 permission. That is not in any way a violation of a protective
10:15 24 order.

10:15 25 Under VLSI's reasoning, a party would never be able to

10:15 1 move for relief from a protective order without violating that
10:15 2 protective order, because in its mere suggestion by a party
10:15 3 that it has identified information or categories of information
10:15 4 for another case would itself be a protective order violation.

10:15 5 THE COURT: Mr. Selwyn, forgive me, but you're not
10:15 6 addressing at all what I just asked.

10:16 7 I get that there are reasons why you have -- you could
10:16 8 look back, looking backwards you might say, "Okay, I'm going to
10:16 9 allow this to be used."

10:16 10 What I would like you to specifically address to me is --
10:16 11 I can only imagine what Intel's response would be if
10:16 12 Mr. Washburn came in and said, "We've changed our mind. We'd
10:16 13 like to go file some more lawsuits against Intel. We'd like to
10:16 14 use the source code that was provided to us in this case under
10:16 15 the protective order with an agreement that we wouldn't use it
10:16 16 in future cases, and, Judge, look at this boilerplate language
10:16 17 here. It says 'protective orders are always subject to change'
10:16 18 and so, you know, wave my hands and it's okay."

10:16 19 My question to you is this: Is to me -- to me I find the
10:17 20 information that you are seeking from the plaintiff here to be
10:17 21 equally the crown jewels that Intel would -- I can't think of
10:17 22 anything that is more of a crown jewel to the plaintiff, this
10:17 23 kind of plaintiff than the information you're seeking; and so
10:17 24 to me it's information of equal dignity and Intel certainly
10:17 25 would never agree that its source code that's provided in this

10:17 1 case so that the plaintiffs could make their infringement
10:17 2 contentions would ever be allowed to be used in a manner in
10:17 3 another case, to shore up infringement contentions in another
10:17 4 case, to create new infringement contentions, to bring
10:17 5 lawsuits, so I want you to address not whether or not the
10:17 6 protective order allows for an amendment to be made.

10:18 7 Tell me why if the exchange -- the consideration that was
10:18 8 exchanged between the parties here was plaintiff gave this kind
10:18 9 of crown jewel information to the defendant under a
10:18 10 confidentiality agreement that it wouldn't be used for any
10:18 11 purpose other than this litigation, Intel provided its source
10:18 12 code so that as crown jewel information with the agreement it
10:18 13 wouldn't be used or seen by anyone outside of this litigation,
10:18 14 why should I not protect the information that the plaintiff
10:18 15 wants me to protect?

10:18 16 And let me add one more thing. An argument I could
10:18 17 foresee would be that if there's information -- I anticipate
10:18 18 Intel wanting to be pretty careful during the trial when source
10:18 19 code is discussed. I'm anticipating Intel is going to say:
10:19 20 We'd like to close the courtroom. We'd like this to be
10:19 21 confidential because we don't want this information getting
10:19 22 out.

10:19 23 I can see -- I could see the plaintiff saying exactly the
10:19 24 same thing with the reciprocal information of theirs: We don't
10:19 25 want this information getting out.

10:19 1 So I anticipate that even during the course of trial this
10:19 2 information won't become public and, therefore, the exchange of
10:19 3 it was given by the parties with the understanding that it
10:19 4 would be maintained confidential and quarantined in this case.
10:19 5 So that's what you need to address.

10:19 6 MR. SELWYN: The information that we're seeking would
10:19 7 continue to remain confidential. It would be subject to --

10:19 8 THE COURT: And used only in this case. I mean, that's
10:19 9 the problem. I get it's going to remain confidential until,
10:19 10 for example, the judge decided it wouldn't have to be
10:19 11 confidential.

10:19 12 I mean, once it's cabined only -- once I allow it to go to
10:20 13 that court, it's cabined only under his discretion of whether
10:20 14 or not -- and I'm not debating that. I would feel the same way
10:20 15 if it came to me. I would say now it's in my court and I'm
10:20 16 going to exercise it, and I'm completely okay with the idea
10:20 17 another federal judge would then decide whether my issue is the
10:20 18 information was exchanged to Intel, only with the agreement
10:20 19 that it would not be used except in this litigation.

10:20 20 And that seems pretty obvious to me. In all the years
10:20 21 I've practiced, I can't -- and I long ago represented Intel. I
10:20 22 can't even imagine Intel agreeing to give up information in
10:20 23 this case, in a case knowing that a judge could decide that
10:20 24 the -- a non-practicing entity would be able to use it for any
10:20 25 other reason other than in this case, especially for help in

10:20 1 another litigation, which is exactly -- there's no difference
10:21 2 between you wanting to use this information in your antitrust
10:21 3 case than it is my good friend Mr. Washburn wanting to use your
10:21 4 Intel source code to bring other patent lawsuits.

10:21 5 It's -- you want to use confidential information in this
10:21 6 case, in another case, in another litigation, and that is not
10:21 7 at all what the plaintiff agreed to, anymore than Intel agreed
10:21 8 to the use of the source code.

10:21 9 MR. SELWYN: And, Your Honor, the source code is a good
10:21 10 example because, in fact, the parties have agreed that there
10:21 11 would be cross use of the source code between the cases. And
10:21 12 that's by agreement to the parties, which the protective order
10:21 13 allows the parties to do.

10:21 14 THE COURT: The cases in this Court. The case that's in
10:21 15 this Court.

10:21 16 MR. SELWYN: No, Your Honor. The cases in this Court and
10:21 17 the cases in Delaware. So it's cross use between courts.

10:21 18 THE COURT: But not to -- but you have not agreed -- if
10:21 19 you've agreed -- I'll tell you what, I'll make a deal with you.
10:21 20 Let's cut direct to the chase.

10:22 21 If Intel is willing to agree to allow Mr. Washburn and
10:22 22 VLSI to use the source code that Intel has produced for the
10:22 23 purposes of use in current litigation -- I'm aware of the
10:22 24 Delaware litigation in fact -- if Intel is willing to strip
10:22 25 from the protective order the use -- the protection from the

10:22 1 use of source code for other purposes for other litigation --
10:22 2 and by that I mean to determine whether or not Intel -- other
10:22 3 Intel products infringe other patents that VLSI owns, then I'll
10:22 4 be happy to consider allowing you to use this information of
10:22 5 VLSI's in the California litigation.

10:22 6 MR. SELWYN: So with respect, Your Honor, I think that
10:22 7 this is a different issue. And it's a different issue because
10:22 8 Judge Chen has said that this is information that would lend
10:22 9 further support to the allegations in Intel and Apple's
10:23 10 complaint to be filed next month. And he indicated that this
10:23 11 was the type of thing that Intel could have sought relief under
10:23 12 the terms of the protective order to obtain.

10:23 13 And I would respectfully suggest that Paragraph 65 of the
10:23 14 protective order, it is not mere boilerplate but it's an
10:23 15 important part of protective orders that allow parties to come
10:23 16 back where there is relevant information to be used in another
10:23 17 forum.

10:23 18 Now, you have to, of course, ask permission for that.
10:23 19 There has to be made a showing of why you want to use it. For
10:23 20 example, in the Peleton case that we refer to in the table,
10:23 21 Judge Payne considered a similar situation where a party wanted
10:23 22 to use protective information before the PTAB. And a similar
10:23 23 argument was made by the party opposing production.

10:23 24 And Judge Payne said even though at the time the
10:23 25 protective order was entered, the party that produced the

10:24 1 information may have assumed it would only be used for this
10:24 2 case, they couldn't have anticipated this situation.

10:24 3 THE COURT: Was the PTAB case in that case related to the
10:24 4 same patents that were asserted?

10:24 5 MR. SELWYN: Yes.

10:24 6 THE COURT: Okay. I don't see that similar in any way to
10:24 7 this. Do you have anything else that you'd like to add?

10:24 8 MR. SELWYN: I think it is similar because it goes to the
10:24 9 question of the relevance of the information to be considered
10:24 10 by another forum.

10:24 11 Here we have a situation where there really is no dispute
10:24 12 that it would be relevant to Judge Chen, that he has indicated
10:24 13 in his decision that it's relevant and that it will be
10:24 14 protected and sealed in the Northern District of California.

10:24 15 So this is a typical situation of coming back to the
10:24 16 Court, asking for permission for relief to use what is clearly
10:24 17 relevant information and that it remained sealed --

10:24 18 THE COURT: If it is typical, why have I not seen it in
10:24 19 two and a half years? It's not typical to me and I don't
10:25 20 recall, in the 20 years I practiced, this happening either.

10:25 21 MR. SELWYN: It is, I would say, Your Honor, a typical
10:25 22 situation for seeking relief from a protective order. Granted,
10:25 23 parties don't often come to seek relief, but this is a
10:25 24 situation where another federal judge has expressly said: This
10:25 25 is information that could be considered in support of Intel's

10:25 1 and Apple's amended complaint.

10:25 2 So you may not see these motions every day, but it is a
10:25 3 typical situation where it is appropriate to grant relief from
10:25 4 the strictures of the protective order where the information is
10:25 5 relevant. There's no question that it will be maintained in
10:25 6 confidence by the other court and there's no prejudice to the
10:25 7 party opposing the production.

10:25 8 THE COURT: Anything else you'd like to add?

10:25 9 MR. SELWYN: No, Your Honor.

10:25 10 THE COURT: Okay. I'll be back with y'all in a few
10:25 11 seconds.

10:25 12 (Pause in proceedings.)

10:29 13 THE COURT: If we could go back on the record, please.

10:29 14 The Court is going to deny the relief that Intel is
10:29 15 seeking. Let me make as clear as possible, I have great
10:29 16 respect for my brethren in California, and I certainly am not
10:29 17 doing this because I have any doubt that information that he
10:29 18 would be using would be maintained in an entirely appropriate
10:29 19 manner; but I'm going to choose not to amend my protective
10:29 20 order for the reasons I think I've made pretty clear on the
10:29 21 record.

10:29 22 Mr. Mann, is there any other issue that we need to take up
10:29 23 this morning?

10:29 24 MR. MANN: No, Your Honor.

10:29 25 THE COURT: Mr. Ravel?

10:29 1 MR. RAVEL: No, Judge. That's it.

10:29 2 THE COURT: Let me ask you this. You're free -- I'll
10:29 3 start with Mr. Mann and then you're free to tell me it's none
10:30 4 of my business. I'm just a little curious. When are you folks
10:30 5 headed to Waco, Mr. Mann?

10:30 6 MR. MANN: I'm heading there Thursday. I think my
10:30 7 colleagues from California are coming in Saturday. There's
10:30 8 probably the preparatory team coming in Wednesday or Thursday
10:30 9 for other issues at the hotel.

10:30 10 THE COURT: Mr. Ravel?

10:30 11 MR. RAVEL: I think pretty close to the same time, maybe
10:30 12 trending toward the beginning part of next week.

10:30 13 THE COURT: Okay. I hope you all -- I hope we've made
10:30 14 clear to you all that you have complete, open access to the
10:30 15 courtroom for your folks to come in and set up whatever
10:30 16 equipment you need to set up.

10:30 17 Are you all working with Blake or one of my law clerks,
10:30 18 whoever it is, if you don't have Blake's number, you should get
10:30 19 it on speed dial and make sure -- he's my technical person --
10:30 20 and I'm telling you in advance you have permission during
10:31 21 regular work hours to come in at any time and be setting up for
10:31 22 the trial.

10:31 23 So if you have any issues there, please let me or my law
10:31 24 clerks know and I will take care.

10:31 25 MR. MANN: Thanks, Your Honor. Mr. Ravel and I are

10:31 1 talking evidently on trying to set up a live feed to some other
10:31 2 rooms that we can use. So...

10:31 3 THE COURT: Great. Great. Yeah. I think -- and I would
10:31 4 not mind having your input -- my thinking is, at the moment,
10:31 5 we've got two really big rooms. I'm sure you've been to both
10:31 6 of them which are the other courtrooms and then the jury -- not
10:31 7 my little jury usual room, but where we bring the jurors, all
10:31 8 the jurors in, we do the grand jury. You all might try and
10:31 9 figure out which you think is the better -- last time we had
10:31 10 the jurors, last three times I think we put the jurors in the
10:32 11 other district courtroom and let them spread out, and put the
10:32 12 video feed in the big jury impaneling room.

10:32 13 I'm not sure that that's the best way one way or the
10:32 14 other, and what I would suggest is whichever is easier to do
10:32 15 the live feed to would be the one not to put the jury in
10:32 16 because they're not going to need it. They're going to be in
10:32 17 person.

10:32 18 So if one room or the other is easier to do, because I
10:32 19 anticipate some members of the public would want to come in and
10:32 20 watch lawyers of this caliber try this case, and so I want to
10:32 21 make it as accessible to the public as I can through that feed.

10:32 22 So, again, as you're working with Blake, whichever makes
10:32 23 the most sense to you all is -- would be absolutely fine with
10:32 24 me. So...

10:32 25 MR. MANN: Thank you, Your Honor.

10:32 1 MR. RAVEL: Judge, thanks for that. While we're on the
10:32 2 subject, the pretrial order between the parties contemplates
10:33 3 that the -- it could be broader than that, to anyone who is
10:33 4 entitled to see it and...

10:33 5 THE COURT: You blanked out on whatever your key word was.
10:33 6 I don't know what it is you're talking about because the --
10:33 7 your mic went out. What is the topic we're talking about?

10:33 8 MR. RAVEL: Under the parties' pretrial order they had
10:33 9 suggested that the feed can be --

10:33 10 THE COURT: Oh, the feed --

10:33 11 MR. RAVEL: -- seen by anyone who is allowed under the
10:33 12 protective order to see it.

10:33 13 THE COURT: Yes, sir.

10:33 14 MR. RAVEL: And the preliminary view from technical people
10:33 15 is that that puts no stress on the Court, that once we have the
10:33 16 feed, we can then use it appropriately. And I just wanted the
10:33 17 Court to know about that pretrial order --

10:33 18 THE COURT: I think --

10:33 19 MR. RAVEL: -- agreement and that the parties are working
10:33 20 together to both make this safe in the COVID sense and to put
10:33 21 this Court on the map. There is a technical superstar who
10:34 22 allows all that to happen.

10:34 23 THE COURT: Yeah. Let me ask you one more thing. And I'm
10:34 24 not holding you to either -- this is purely for planning
10:34 25 purposes. You can -- if this changes, you just need to let the

10:34 1 other side know a day or two ahead of time.

10:34 2 But, Mr. Mann, do you plan to have anyone attending as a
10:34 3 witness by video?

10:34 4 MR. MANN: I think we may have one, at least, but I --
10:34 5 that's not been finalized yet.

10:34 6 THE COURT: Okay. And the only reason I care, again, is
10:34 7 this: Number one, the time to let the other side know it's
10:34 8 going to be by video is not that morning. And the time to let
10:34 9 me know, unless something really happens, is not that morning,
10:34 10 just because I want to make sure it works, not being all
10:34 11 federal judgy about it. You guys have complete control of the
10:34 12 order of witnesses and all that. That's what trial lawyers do.

10:34 13 It's just I want to make sure, number one, if you tell me
10:34 14 Dr. Smith is going to be there on Tuesday but he's going to be
10:35 15 by videotape, we know to be ready for that. And also the other
10:35 16 side knows how they're going to have to prepare for it. And
10:35 17 vice versa. And that might be the only thing that would be a
10:35 18 little bit harder to do just on the ad-lib unless something
10:35 19 came up.

10:35 20 I think I've told you this before too, if you have anyone
10:35 21 who is going to attend in person who has any sensitivity about
10:35 22 coming through the courtroom -- I'm sorry, courthouse, let me
10:35 23 know in advance and we will adapt to that and make sure that
10:35 24 that person can enter and leave the courtroom as safely as
10:35 25 possible. I'm happy to make that accommodation.

10:35 1 And then, finally, there is -- there have been requests
10:35 2 from reporters to be able to attend the trial by Zoom. That is
10:36 3 fine with me. I'm not sure it's fine with the judicial world,
10:36 4 however, so I'm going to look into that myself and make sure
10:36 5 that -- you keep telling me they can't fire me, but I don't
10:36 6 want to test that theory. And so -- I kind of already am, I
10:36 7 guess, but...

10:36 8 And so does anyone have -- would anyone have an
10:36 9 objection -- and this would not be during anything that was
10:36 10 where the courtroom was closed for tiny amounts of time -- but
10:36 11 does either party have any objection to -- if I get approval to
10:36 12 allow reporters to attend the trial by Zoom, does anyone object
10:36 13 to that?

10:36 14 I'll start with Mr. Ravel, just because he's dead center
10:36 15 in my screen.

10:36 16 MR. RAVEL: It's not something we've talked about
10:36 17 internally, Judge. I'd want to have a caveat that I could get
10:36 18 overruled by this, but I don't see any problem with that at
10:36 19 this point, with the Court's caveat that both sides'
10:37 20 confidential information is --

10:37 21 THE COURT: Correct. No, no, no. I will -- in fact, that
10:37 22 will be the easiest thing to do, will be to shut that video
10:37 23 feed off during that period of time. That's easier than
10:37 24 clearing the courtroom, so yeah.

10:37 25 But I'm just -- I want to make sure you all don't object.

10:37 1 If I can get permission to allow reporters to attend by Zoom,
10:37 2 that would be my preference. You know, because people can't
10:37 3 attend it in person. I mean, we're going to be limited on
10:37 4 people space.

10:37 5 MR. RAVEL: Judge, that concept is consistent with what
10:37 6 the parties are working toward on the pretrial order. So it
10:37 7 basically sounds good to us.

10:37 8 THE COURT: Mr. Mann?

10:37 9 MR. MANN: I think I have been saying both, Your Honor. I
10:37 10 don't see an issue, but I need to talk to my colleagues and --

10:37 11 THE COURT: Okay. And your client. And by the way, this
10:37 12 is one of those deals where you get a veto. I mean, if someone
10:38 13 says, no, we don't want that, then I won't do it. I'm -- you
10:38 14 know, during COVID time being able to do this means fewer
10:38 15 people trying to get into the limited number of seats that
10:38 16 we're going to be having in the courtroom, is the deal. So
10:38 17 hopefully it won't be a big deal for you all, but certainly let
10:38 18 me know. Okay.

10:38 19 MR. TINDEL: Judge.

10:38 20 THE COURT: Mr. Tindel?

10:38 21 MR. TINDEL: When you say "reporters to participate by a
10:38 22 Zoom link," do you mean just specified people having a Zoom
10:38 23 link or are you talking about an open public link that
10:38 24 reporters or anybody else can dial into?

10:38 25 THE COURT: At the moment I'm just talking about reporters

10:38 1 who request it. I don't know what the rules are at this point
10:38 2 on allowing the world to watch -- again, not sensitive periods,
10:38 3 but I'm not sure what the rules are on me making the Zoom feed
10:38 4 live and available to everyone.

10:38 5 That would be a pretty bold thing for a federal court to
10:39 6 do, and I just don't know if I have the -- I think it would be
10:39 7 great. I mean, I can't imagine any reason why -- you know, the
10:39 8 Supreme Court is -- they're not on video, but they're doing
10:39 9 live feeds of their -- to the world now, you know. When the
10:39 10 Supreme Court has oral arguments, I'm sure you all, like me,
10:39 11 are right there listening to them live, because I have -- I
10:39 12 just don't have anything better to do. And that's a true
10:39 13 story. I really do do that.

10:39 14 But, you know, maybe we are evolving in federal courts to
10:39 15 the idea that people will be able to attend things in that
10:39 16 manner, because -- but I will have to get approval for that.

10:39 17 MR. MANN: I'd like to exclude my wife, because of her
10:39 18 criticisms of me. So...

10:39 19 (Laughter.)

10:39 20 THE COURT: I can't imagine any woman being married to
10:39 21 you, Mark Mann, that doesn't feel like every day like she's the
10:39 22 luckiest person on the planet.

10:39 23 MR. MANN: Judge, I'm sending that home to her.

10:39 24 MR. TINDEL: Judge, I know Debbie and she does not feel
10:40 25 that way.

10:40 1 (Laughter.)

10:40 2 MR. MANN: Somebody has to keep you grounded.

10:40 3 THE COURT: I understand. In fact, as soon as I hang up
10:40 4 here I'm going to go find out just how happy my wife is with me
10:40 5 this morning. So we'll see. So it's a Monday, you never know.

10:40 6 But so, you gentlemen have a great afternoon, and I look
10:40 7 forward very much to seeing you in -- two weeks from tomorrow.
10:40 8 If anything comes up, by the way, especially with regard to
10:40 9 doing the voir dire that is a problem between now and then that
10:40 10 you think of, please let me know and we'll take care of it,
10:40 11 because that's just a week from Thursday.

10:40 12 MR. TINDEL: Judge, one more question.

10:40 13 THE COURT: Of course.

10:40 14 MR. TINDEL: The 15th, which is the President's Day
10:40 15 holiday, is the courthouse going to be closed?

10:40 16 THE COURT: I'm sure it will be. Yeah. I will have no
10:40 17 one -- I mean, if you guys need to be let in, I don't know if
10:40 18 I'll be there or not. Probably my law clerks will be, and if
10:40 19 we need to let you -- but I'm not even sure I could allow you
10:41 20 guys in, because my guess is we'll have no security in the
10:41 21 courthouse. And I'm not sure I can let people just be in the
10:41 22 courthouse. If an emergency comes up and you all need to get
10:41 23 in for some reason, and Evan or someone's there and can let you
10:41 24 in and do something short and quick, I'm sure that'll be fine.
10:41 25 But I'm 99 percent sure that the courthouse will be closed and

10:41 1 will have no security, and I don't know that I would be allowed
10:41 2 to let you all in.

10:41 3 MR. TINDEL: So the safe thing to do would be all our
10:41 4 technical setups for both parties, et cetera, really needs to
10:41 5 get done Friday.

10:41 6 THE COURT: Yes. I could not put it better. That's why
10:41 7 I'm telling you on February 1st you have between now and a week
10:41 8 from Friday, you have open access and during business hours to
10:41 9 have anyone come in there at any time.

10:41 10 I don't think -- I may have sentencings this Wednesday and
10:42 11 next. Well, Wednesdays are the only days I do things in person
10:42 12 in the court, because that's when I do my sentencings, and I
10:42 13 have to do those in person mostly. But other than that, the
10:42 14 courtroom is yours to do whatever you want to.

10:42 15 MR. TINDEL: Thank you.

10:42 16 THE COURT: But I would say, yeah. I would say Friday at
10:42 17 5 o'clock, a week Friday at 5 o'clock is drop dead.

10:42 18 And Evan just texted me -- this is what makes technology
10:42 19 so great. I could act like I know what my schedule is but I
10:42 20 don't. I have sentencings this week but none next week, so
10:42 21 literally all five days next week are available to your
10:42 22 technical people.

10:42 23 MR. TINDEL: Thank you, Your Honor.

10:42 24 THE COURT: Now, if we're going to be on Zoom, someone
10:42 25 needs to help me make sure that I find a way to look good if

10:42 1 I'm going to be on Zoom. Maybe I should make that a rule that
10:42 2 they can't show me. So, but at least it means for a change
10:42 3 I'll stay awake during the trial. That'd be a good thing.

10:42 4 So anything else?

10:42 5 MR. RAVEL: No, Judge.

10:43 6 THE COURT: Okay. Y'all have a good afternoon. Take
10:43 7 care.

10:43 8 (Hearing adjourned at 10:43 a.m.)

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1 UNITED STATES DISTRICT COURT)
2 WESTERN DISTRICT OF TEXAS)
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4 I, Kristie M. Davis, Official Court Reporter for the
5 United States District Court, Western District of Texas, do
6 certify that the foregoing is a correct transcript from the
7 record of proceedings in the above-entitled matter.

8 I certify that the transcript fees and format comply with
9 those prescribed by the Court and Judicial Conference of the
10 United States.

11 Certified to by me this 1st day of February 2021.

12
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